HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Writ Petition No. 1101 of 2002 (S/B)

Date of Decision : 25th August, 2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting.~~

Date : 25.08.2006 Initial of Judge.

Not : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1101 of 2002 (S/B)

Yogesh Kumar Pant
S/o Sri Dinesh Chandra Pant
Present posted as Assistant Engineer (Incharge)
Kumaon Mandal Vikas Nigam Ltd. Lakshmeshwar,
Almora ....Petitioner

Versus

1. Kumaon Mandal Vilas Nigam Ltd.
   Oak Park House Mallital, Nainital
   Through its Managing Director

2. Chairman Board of Directors
   Kumaon Mandal Vikas Nigam Ltd.
   Oak Park House Mallital, Nainital

3. Secretary Bureau of Public Enterprises Uttaranchal,
   Dehradun ....Respondents

Mr. Manoj Tiwari, Advocate assisted by Sri Alok Mehra, Advocate for the petitioner
Sri Shobhit Saharia, Advocate for the respondents

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

JUDGMENT

PER Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the constitution of India, the petitioner has sought the following reliefs :-

"i) To issue a writ or direction in the nature of mandamus commanding the respondent No. 1 to consider and promote the petitioner to the Group-B post of Assistant Engineer (Civil) in accordance with the General Service Rules of the Nigam.

ii) To issue a writ order or direction in the nature of mandamus directing the respondent No. 1 to fill the Group-B post of Assistant Engineer in Construction

Department of the Nigam by promotion on regular basis immediately after occurrence of vacancy under promotion quota.

iii) To issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv) To award the cost of the writ petition in favour of the petitioner."

2. Brief facts for the disposal of this petition are that in the year 1972 the State Government constituted Hill Development Corporation which was subsequently bifurcated into two independent corporations, i.e. Kumaon Mandal Vikas Nigam Ltd. And Garhwal Mandal Vikas Nigam Ltd. The petitioner was appointed as a Junior Engineer after adopting due procedure vide order dated 29.08.1981. Thereafter, the petitioner was appointed as Assistant Engineer (Incharge) vide order dated 09.10.1998 in view of the shortage of officers on the post of Assistant Engineers. Since then, the petitioner had been serving continuously as Assistant Engineer in the said Corporation. The order of appointing the petitioner as Assistant Engineer (Incharge) clearly indicates that he would continue as Assistant Engineer (Incharge) till the post is filled by deputation and he will not get any pay for the post of the Assistant Engineer. The petitioner stands at serial No. 2 in order of seniority list among the Junior Engineers. Sri Prakash Chandra Punetha who was appointed on 21.04.1980 is at serial No. 1 in the seniority list. The petitioner has not been given any regular promotion even after putting nearly 21 years of service as a Junior Engineer. It was further alleged in the petitioner that one Sri Harish Chandra Lal Sah, Junior Engineer of Public Works Department

was taken on deputation in the Corporation in the year 1979 and his services were absorbed as a Junior Engineer in the Corporation. Thereafter, he was promoted as Assistant Engineer in the year 1984 and he ultimately retired from the services in the year 1994. The said post of the Assistant Engineer of the general category caused vacant due to the retirement of Sri Harish Chandra Lal Sah, which has not been filed so far. In the year 1982-83, Sri Lalit Mohan Joshi, Sri D.C. Nainwal and Sri L.M. Tripathi were taken on deputation as Assistant Engineers (Incharge) in the respondent/corporation. Out of the aforesaid three person, D.C. Nainwal and L.M. Tripathi had been repatriated to their parent departments in the year 1987 and 1992 respectively. Sri Lalit Mohan Joshi who was subsequently absorbed and promoted as Assistant Engineer in the year 1985 had also retired from the services in the year 1997. After retirement of Lalit Mohan Joshi, the said post of Assistant Engineer belonging to the general category has not been filled up so far. The post held by Sri D.C. Nainwal and Sri L.M. Tripathi had not been filled up after their repatriation to their parent departments either by direct appointment, promotion and by deputation. The said posts are also vacant. The respondent/corporation had promoted Sri Devendra Prasad on 30th March, 1992. There is no other regular Assistant Engineer in the respondent/corporation except Sri Devendra Prasad who is holding the charge of regular Assistant Engineer. The rest of the vacant posts of Assistant Engineers are manned by Junior Engineers or by Work Supervisors. It was further alleged that the General Service Rules of the Corporation, which regulates the appointment and other conditions, of the services of its employees, provides that 50% posts shall be filled up by promotion. It is further

provided under the Rules that if, at any time, it is found that sufficient number of employees are not available for filling up in the quota by promotion, the corporation may fill up those posts also by open market selection. It was further alleged that presently as many as 5 posts of Assistant Engineers are lying vacant and these posts are being manned by the Incharges. The petitioner has further alleged that due to the inaction on the part of the respondent No. 1 to initiate selection process for promotion, the petitioner is being denied his vested right to be considered for promotion. He has been working as Assistant Engineer (Incharge) since 1998 to till date. The petitioner had completed 21 years of services in the respondent/corporation and in absence of promotion avenues, the interests of the petitioner had been degenerating due to stagnation in the services by ending his desire to serve Corporation anxiously. The petitioner has further alleged that vacancy of the Assistant Engineer had been filed up by deputation by taking Junior Engineer from other departments for serving vacant post of Assistant Engineer in the Corporation. He had further alleged that such action of the respondent/Corporation is absolutely arbitrary and unreasonable when the Junior Engineer with wide experience is available in the Corporation, who had been waiting for their promotion for last so many years and had been allowed to be waited. The petitioner has prayed to consider and promote him to the post of the Assistant Engineer in accordance with the general rules of the Corporation.

3. The Corporation has filed the counter affidavit in which it is stated that there are no vacancies available in the general category for the post of the Assistant Engineer for the reason

that the quota of the reservation category would not be filled up by the general category. The petitioner can only be promoted if there are vacancies available in the next higher grade. The Assistant Engineers of P.W.D. were taken on deputation in the interests of the Corporation. It was further pointed out that there are four posts of Assistant Engineers in the Corporation and out of which two posts are earmarked for being filled up by way of promotion and one post has already been filed up by way of promotion and against the remaining vacant post, one person is working on the deputation. It was further pointed out in the counter affidavit that the 5th person apart from the four above posts had been working on muster roll basis in view of the work being available for the time being. The petitioner could not be considered for being promoted for want of vacancy by way of promotion. The rejoinder affidavit filed by the petitioner narrates the facts mentioned in the writ petition.

4. Heard Sri Manoj Tiwari-Advocate assisted by Sri Alok Mehra-Advocate for the petitioner and Sri Shobhit Saharai, learned counsel for the respondent/corporation.

5. It was contended on behalf of the learned counsel for the petitioner that the petitioner had been working as a Junior Engineer on the regular post since 1981. The respondent No. 1 had been filling up the available vacancy on the post of the Assistant Engineer by taking person from outside on deputation and the right of the petitioner being affected by not promoting him. It was further contended by the learned counsel for the petitioner that taking persons on deputation when Junior Engineers having wide experience were available in the feeding cadre was patently arbitrary and

unreasonable and such act of the Corporation could not be sustained. It was further contended that the posts of the Assistant Engineers are vacant. The petitioner himself has been working in the post of Assistant Engineer as Incharge without any salary since 1998. It was further contended that the reasonable promotion avenues should be available for every man of public service to foster the appropriate attitude to grow for achieving excellence in service. It was further contended that the right for promotion is the vested right of the petitioner which could not be denied to him of the rules permits so. It was further contended that the inaction on the part of the respondent No. 1 to initiate the selection process for promotion, the petitioner had been denied his vested right to be considered for promotion. Learned counsel for the Corporation refuted the contention and contended that the petitioner can only be taken into account for promotion if there are vacancies available in the next higher grade. He further contended that there are no vacancies available in the general category for the post of the Assistant Engineer.

6. Perusal of Rule-17 of 'Kumanon Mandal Vikas Nigam Limited, Nainital General Service Rules' Annexure 4 to the writ petition (hereinafter referred as K.M.V.N.L. General Service Rules) shows that 50% of Group-B posts will be filled by open market selection and other 50% reserved for being filled up by promotion from eligible employees within the Corporation. If, however, at any time it is found that sufficient number of employees are not available for filling in the quota by promotion the Corporation may fill those posts also by open market selection. There will thus be no rigidity bout quota for direct recruitment or by promotion and there

will not be any carry over of vacancies to subsequent years. It is not disputed that the petitioner was appointed in the year 1981 and he had been serving continuously in the Corporation for the last 21 years. It is averred in the counter affidavit that there are four posts of Assistant Engineers in the Corporation out of which two posts are earmarked for being filled up by was of promotion and one post had already been filled up by way of promotion and Sri Devendra Prasad belonging to the scheduled castes category had been appointed as a Assistant Engineer. Against the remaining one vacant post of promotion quota, Sri K.K. Kandpal, Junior Engineer belonging to the Public Works Department was taken on deputation in the Corporation in the year 1999 and had been working on deputation since then. It was informed by the learned counsel for the petitioner that the experience of Sri K.K. Kandpal is less than the experience of the petitioner. Learned counsel for the Corporation further informed that the other two posts which are to be filled up by the open market selection are also vacant. Rule 17 (3) of K.M.V.N.L. General Service Rules clearly provides that if the suitable candidates are not available, there would be no rigidity about the quota for direct recruitment or by promotion and there would not be any carry over of the vacancy to the subsequent years. Thus the petitioner had a legitimate expectation to be promoted in the post of Assistant Engineer. The petitioner had a right to be considered for promotion under Rule 17 (3) of K.M.V.N.L. General Service Rules and his legitimate expectation and his right cannot be denied in any circumstances whatsoever. Due to the inaction on the part of the respondent No. 1 to initiate selection process for promotion as provided under Rule 17 (3) of K.M.V.N.L. General Service Rules, the petitioner’s legitimate

expectation and his vested right to be considered for the promotion had been denied. No only, the inaction on the part of the respondent No. 1 to initiate the selection process for promotion but to appoint the Junior Engineer of the Public Works Department having less experience on deputation than the petitioner without being considered the petitioner to the post of the Assistant Engineer by promotion. The petitioner had been working as a Junior Engineer for the last 21 years. There is a clear provision under Rule 17 (3) of K.M.V.N.L. General Service Rules for the promotion of the Junior Engineers to the post of the Assistant Engineer. The rule clearly provides for the removal of the stagnation in the cadre of Junior Engineer of the Corporation. The Corporation's inaction had created stagnation in the cadre of the Junior Engineer.

7. In view of the foregoing discussion, we are of the considered opinion that the petitioner is liable to be allowed and is accordingly allowed. It would be just and proper to issue direction to the Corporation to consider the case of all eligible Junior Engineers of Group-C to the post of Group-B Assistant Engineer (Civil) in accordance with the rules applicable to the Corporation.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

25th August, 2006
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